

IN THE COMMON PLEAS COURT
LUCAS COUNTY, OHIO

TRISTATE HEALTHCARE SERVICES,
LLC

P.O. Box 1091
Sayreville, NJ 08871

Plaintiff,

v.

BLUE CREEK HEALTHCARE, LLC, et al.,
11239 Waterville Street
Whitehouse, OH 43571

Defendants.

) Case No. G-4801-CI-0201804663-000

) Hon. Joseph V. McNamara

) **AMENDED COMPLAINT**

) James P. Silk, Jr. (0062463)

) SPENGLER NATHANSON P.L.L.

) 900 Adams Street

) Toledo, Ohio 43604

) Telephone: (419) 252-6210

) Facsimile: (419) 241-8599

) jsilk@snlaw.com

) *Counsel for Plaintiff*

Plaintiff, Tristate Healthcare Services, LLC, by and through its attorneys, states and
avers for its Amended Complaint as follows:

FIRST CLAIM FOR RELIEF

1. Tristate Healthcare Services, LLC, hereinafter "Plaintiff," is a limited liability corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in Sayreville, Middlesex County, New Jersey.

2. Blue Creek Healthcare, LLC, hereinafter "Defendant," is a limited liability corporation organized and existing under the laws of the State of Ohio with its principal

place of business in Whitehouse, Lucas County, Ohio. At all times material hereto, its business has been conducted in Whitehouse, Lucas County, Ohio.

3. On or about May 11, 2018 Defendant entered into an Agency Client Service Agreement ("Service Agreement"), with Plaintiff wherein Plaintiff was to supply and Defendant was to pay for certain services on account. See the Agency Client Service Agreement, a true and accurate copy of which is attached hereto as Exhibit A.

4. Between July 26, 2018 and September 14, 2019, Defendant purchased from Plaintiff certain services in the total amount of Seventy-Three Thousand Seven Hundred Nine and 56/100 Dollars (\$73,709.56), all of which were delivered to and accepted by Defendant. See the itemized statements attached hereto as Composite Exhibit B.

5. At all times material hereto, Plaintiff has made a demand upon Defendant for payment, but Defendant has unlawfully refused and failed to make such payment. Payment for the sale of said services by Plaintiff to Defendant was due within 30 days of the date on each invoice. To date, Defendant is indebted to Plaintiff in the amount of Seventy-Three Thousand Seven Hundred Nine and 56/100 Dollars (\$73,709.56) on the account stated, plus the sum of Six Thousand Eight Hundred Thirteen and 81/100 Dollars (\$6,813.81) as late charges from the date each invoice was due through December 15, 2018, plus late charges from December 15, 2018 through the date of payment at the rate of 1.5% per month plus all costs of collection, reasonable attorney's fees and court costs as set forth in Paragraph No. 8 of the Service Agreement.

SECOND CLAIM FOR RELIEF

6. Plaintiff incorporates the foregoing paragraphs 1-5 so as to be accorded the same effect as if fully restated herein.

7. Plaintiff's performance of the services to Defendant was premised upon a written agreement between Plaintiff and Defendant whereby Plaintiff was to deliver and Defendant was to pay for a quantity of services.

8. Plaintiff has performed all conditions precedent to the enforcement of said written agreement and Defendant, despite numerous demands, have failed and/or refused to make full payment for said services.

9. As a direct and proximate result of Defendant's refusal and/or failure to pay for such services, Defendant has breached its agreement with Plaintiff and has damaged Plaintiff in the amount of Seventy-Three Thousand Seven Hundred Nine and 56/100 Dollars (\$73,709.56) on the account stated, plus the sum of Six Thousand Eight Hundred Thirteen and 81/100 Dollars (\$6,813.81) as late charges from the date each invoice was due through December 15, 2018, plus late charges from December 15, 2018 through the date of payment at the rate of 1.5% per month, plus all costs of collection, reasonable attorney's fees and court costs as set forth in Paragraph No. 8 of the Service Agreement.

THIRD CLAIM FOR RELIEF

10. Plaintiff hereby incorporates the foregoing paragraphs 1-9 so as to be accorded the same effect as if fully restated herein.

11. At all times material herein, Plaintiff tendered services which Defendant accepted and utilized to its economic advantage.

12. Defendant's failure and/or refusal to pay Plaintiff for such services has allowed Defendant to be unjustly enriched to the detriment of Plaintiff in the total amount of Eighty Thousand Five Hundred Twenty-Three and 37/100 Dollars (\$80,523.37).

13. At all times material hereto, Plaintiff has made a demand upon Defendant for payment, but Defendant has unlawfully refused and failed to make such payment. Payment for the sale of said services by Plaintiff to Defendant was due upon receipt. Accordingly, Defendant is indebted to Plaintiff in the amount of Eighty Thousand Five Hundred Twenty-Three and 37/100 Dollars (\$80,523.37) on the account stated, plus late charges from December 15, 2018 through the date of payment at the rate of 1.5% per month, plus all costs of collection, reasonable attorney's fees and court costs as set forth in Paragraph No. 8 of the Service Agreement.

FOURTH CLAIM FOR RELIEF

14. Plaintiff hereby incorporates the foregoing paragraphs 1-13 so as to be accorded the same effect as if fully restated herein.

15. Plaintiff further states that Defendant is indebted to it in the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) as the conversion fee of 30.0% of the full-time salary of the then Tristate Healthcare Services, LLC employee, Shayla Rockhold, whom Plaintiff hired in violation of Paragraph 12(a) of the subject Service Agreement.

WHEREFORE, Plaintiff, Tristate Healthcare Services, LLC, demands judgment against Defendant, Blue Creek Healthcare, LLC, in the amount of Eighty Thousand Five Hundred Twenty-Three and 37/100 Dollars (\$80,523.37) on the account stated, plus late charges from December 15, 2018 through the date of payment at the rate of 1.5% per month; plus the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) as the conversion fee for its violation of Paragraph 12(a) of the Agency Client Service Agreement, plus all costs of collection and reasonable attorney's fees as set forth in Paragraph No. 8 of the Service

Agreement; the costs of this action to be taxed against Defendant; and for any further relief in law and equity to which Plaintiff is entitled.

Respectfully submitted,

/s/ James P. Silk, Jr.

James P. Silk, Jr. (0062463)
SPENGLER NATHANSON P.L.L.
900 Adams Street
Toledo, Ohio 43604
Telephone: (419) 252-6210
Facsimile: (419) 241-8599
jsilk@snlaw.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 20th day of February, 2019, via electronic mail, upon: **Michael J. Meyer** (mmeyer@beneschlaw.com),
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLC, 200 Public Square, Suite 2300, Cleveland, Ohio 44114-2378.

/s/ James P. Silk, Jr.

James P. Silk, Jr.
Counsel for Plaintiff

423801



Agency Client Service Agreement

TriState Health Care Services, with its principal office located at 15 Victory Plaza, South Amboy, NJ 08879
Mailing P.O. Box 1091 NJ 08871
("STAFFING FIRM"), and Blue Creek Healthcare
("CLIENT") agree to the terms and conditions set forth in this Staffing Agreement (the "Agreement")

1. Status of Parties. In accordance with the mutual intentions of TriState and Client, this Agreement establishes between them an independent contractor relationship, and all of the terms and conditions of this Agreement shall be interpreted in light of that relationship.

2. Engagement. Client hereby engages TriState to provide, and TriState hereby agrees to provide the staffing services pursuant to the terms and conditions set forth in this Agreement.

3. TriState Health Care Services Responsibilities.

(a) TriState shall recruit, interview, select and employ applicants qualified, in its sole judgment, to provide the Nursing Services.

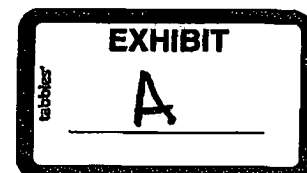
(b) TriState shall employ the Nursing Personnel assigned to the Client under the Agreement. Consistent with its role as employer, TriState will: (i) maintain all necessary personnel and payroll records for its employees, (ii) pay net wages

(c) TriState agrees to provide substitute nurses when needed and to fill all proposed shifts. It is the agency's policy to cover all shifts and assignments as requested by the Client.

(d) Nursing Personnel assigned to Client under this Agreement shall provide patient care in compliance with a patient care plan provided by Client and the applicable standard of care. However, the Client shall have a process in place permitting Nursing Personnel to address concerns when, based upon their professional judgment and expertise.

4. Client Responsibilities

(a) In its performance of this Agreement, Client shall interact with TriState employees in a professional manner consistent with the standards of practice existing within the community and all applicable federal, state and local laws and regulations, including, without limitation, applicable health, privacy, safety and security rules and regulations and the provisions of the Equal Employment Opportunity Act and the Fair Labor Standards Act.



(b) To the extent that either Party determines it is necessary, the Client shall provide Nursing Personnel all training which regarding Client policies and procedures, as necessary, for the Nursing Personnel to perform the Services at Client's facilities. Tristate shall be paid and/or reimbursed as if the Nursing Personnel were performing Services for this training time.

(c) Client will Promptly notify (within 24 hours) Tristate HealthCare services, Inc. by written documentation of any unsatisfactory job performance or action taken to terminate the services of a THP due to incompetence, negligence, or misconduct. In such event the client shall only be obligated to compensate Tristate HealthCare services for actual time worked by the temporary hired person (THP).

(d) The Parties hereto agree at all times to have policies and procedures in place which comply with federal and state privacy laws. The Client shall share a copy of those policies with the Nursing Personnel performing Nursing Services for the Client pursuant to this Agreement. Client shall, if it is deemed appropriate and necessary, provide training at Client's expense related to these policies and procedures.

5. Representations/ Warranties of Tristate

Tristate represents and warrants that all Nursing Personnel assigned to the Client (i) shall possess all licenses, certificates or other applicable permits from all relevant governmental authorities that are legally required for the provision of the nursing services they are assigned to perform; (ii) all such licenses, certificates or permits are valid and in full force and effect

6. Representations /Warranties of Client.

Client shall have and shall maintain at all times throughout the term of this Agreement appropriate insurance coverage including but not limited to, professional liability coverage and premises liability coverage.

7. Compensation for Services. In consideration for Client's provision of the Services, Client shall pay Tristate for the Services at the hourly rates specified in 15 (a), subject to the terms and conditions of this Agreement:

(a) The number of compensable hours worked each week by Nursing Personnel assigned to Client will be determined by the Client and documented by time sheets submitted by Nursing Personnel on a weekly basis. Client will designate members of its staff authorized to sign time sheets prepared by Nursing Personnel on Client's behalf. Time sheets submitted to Tristate bearing the signature of authorized Client staff shall be conclusive of the number of compensable hours worked by Nursing Personnel assigned to Client each week.

(b) Remit payment for services directly to Tristate Health Care, Inc. upon receipt of invoice. In the event the client questions any amounts invoiced, an explanation of any items in question must be received by Tristate Health Care, Inc.' Accounts Receivable department within 15 days. This notification must be made by one of the following means:

By Telephone: (732)-654-2220 By Fax -1866-382-1647

8 Invoicing: Tristate will invoice Client on a weekly basis for Services. Invoices will be sent to Client at the address provided by the Client will remit payment for all services within fifteen (15) days of the receipt of the invoice. Client shall remit all payments to the remit to address printed on the invoice. Any payments not received by Tristate within thirty (30) of the invoice date will be subject to a late charge of 1.5% per month. In the event that Client fails to pay the charges of Tristate, Tristate will pursue legal remedy for the full invoice charges and the Client shall be liable for all costs incurred by Tristate as a result of these collection efforts, including, but not limited to, collection agency costs, and/or attorney fees whether or not litigation is initiated.

9 Work week and Overtime: The parties acknowledge that the hourly rates set forth in 15(a) apply only to the first forty (40) hours or less worked by non-exempt Nursing Personnel in any Workweek. For the purposes of this Agreement, a "Workweek" is defined as a calendar week beginning on a Monday and ending on a Sunday. For any hours worked by individual Nursing Personnel assigned to Client in excess of forty (40) hours in a Workweek, such hours in excess of forty (40) hours ("Overtime Hours") shall be subject to an "Overtime Pay Rate" which will be one and half of regular time. Overtime Hours shall be evidenced by the time sheets.

10 Cancellation: The Parties expressly agree that Four hours' notice is required for Client cancellation of Nursing Services. If Client Cancels Nursing Services with less than four- hour notice, Client shall pay a four-hour minimum charge.

11 Term and Termination.

(a) This Agreement shall commence on the Effective Date, and continue for a term of one year ("Term") such term commencing the first day after this Agreement has been executed. This Agreement shall automatically renew for one year Terms unless either Party notifies the other in writing thirty days prior to the end of the current Term.

In the event of termination hereunder the total sums payable by Client pursuant to this Agreement shall be payable in full upon receipt of the final weekly invoice for Services.

12. No solicitation: Client acknowledges that employees of Tristate Healthcare Services represent our inventory of skilled professionals and their continued employment represents a valuable asset of Tristate Healthcare. During the term of employment of individual Nursing Personnel with Tristate and for a period of twelve months following the termination of the individual Nursing Personnel's employment with Tristate, Client shall not, directly or indirectly through another entity, induce or attempt to induce any employee of Tristate to leave the employ of, or terminate services to, Tristate, or in any way interfere with the relationship between Tristate and any of its employee.

(a) **Full Time Hire:** If the client is willing to hire Tristate healthcare services employee as fulltime will have to pay the conversion fee of 30.0% of the full-time salary of such employee

(b) Part time hire: Tristate employee be hired by Client under the provisions of this Section, on a part-time basis, the applicable Conversion Fee will equal to twenty five percent (25.0%) of the full-time equivalent salary of such employee.

13. Insurance: Tristate agrees to maintain in effect throughout the duration of this Agreement and, prior to the commencement of Nursing Services, provide Client with certificates of coverage for, the following insurance policy: Liability Insurance- Agency shall provide proof of general liability insurance for agency.

14. Entire Agreement: This Agreement and its attachments is the entire understanding of the Parties. No terms, conditions, or warranties, other than those written in this Agreement, and no amendments or modifications of this Agreement will be binding on the Parties unless in writing and signed by the Parties.

15 Rates: In exchange for Services described in this Agreement, Client shall compensate Tristate Healthcare Services as follows:(a) Bill Rates:

Position	Rates
RN	\$50.00 per hour
LPN	\$40.00 per hour
CMA	\$23.00 per hour
CNA	\$24.00 per hour
HHA	\$20.00 per hour

The following days are considered holidays: New Year's Day, Martin Luther King Jr Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving, Day, Christmas Day.

It is mutually agreed that if an employee works on a holiday the rate will be charged at one and one-half times the above rates

IN WITNESS WHEREOF, the Parties have executed this Agreement.

Client:

By:

Print Name:

Title: LNHA

Date:

Staffing Agency

Tristate Healthcare Services:

By:

Print Name: Christy Singh

Title: Sr. Recruiter

Date:

Christy@tristatehc.com

**TriState
Health Care Services**

INVOICE

P.O. Box 1091
Sayreville, New Jersey - 08871
Phone: 732-654-2220
Fax: 1-866-382-1647

**BILL TO: Blue Creek Health Care
Whitehouse, OH 4371
4198775338**

DATE:

07/06/2018

INVOICE # 07062018

Wk(St-End dt)

[illegible]

EXHIBIT

B

OTHER COMMENTS		TAX RATE	
1. Total payment due in 15 days		OTHER	
2. Please include the invoice number on your check		TOTAL DUE	10,000
Make all checks payable to			
Tristate Healthcare Services			
Mailing address P.O Box :1091, NJ -08871			

If you have any questions about this invoice, please contact 732-215-8474

Thank You For Your Business!

OTHER COMMENTS		TAX RATE	
1. Total payment due in 15 days		OTHER	
2. Please include the invoice number on your check		TOTAL DUE	6813.81
Make all checks payable to			
Tristate Healthcare Services Mailing address P.O Box :1091, NJ -08871			

If you have any questions about this invoice, please contact 732-215-8474

Thank You For Your Business!

**TriState
Health Care Services**

INVOICE

**P.O. Box 1091
Sayreville, New Jersey - 08871
Phone: 732-654-2220
Fax: 1-866-382-1647**

**BILL TO: Blue Creek Health Care
Whitehouse, OH 4371
4198775338**

DATE:

12/31/2018

INVOICE # 12312018**Wk(St-End dt)**[illegible]

OTHER COMMENTS			TAX RATE	
1. Total payment due in 15 days			OTHER	
2. Please include the invoice number on your check			TOTAL DUE	2000.00
Make all checks payable to				
Tristate Healthcare Services				
Mailing address P.O Box :1091, NJ -08871				

If you have any questions about this invoice, please contact 732-215-8474

Thank You For Your Business!